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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 166.

ANNA M. PRICE, WIDOW OF ALFRED J. PRICE, AND JESSIE PRICE, STELLA PRICE AND ANNIE PRICE, MINORS, BY THEIR MOTHER AND NEXT FRIEND ANNA M. PRICE, PLAINTIFFS IN ERROR,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, OPERATING THE WESTERN PENNSYLVANIA RAILROAD.

IN ERROR TO THE SUPKEME COURT OF THE STATE OF PENNSYLVANIA.

FILED NOVEMBER 19, 1881.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Writ of Error to the Court of Common Pleas* 2, *Allegheny County.*
No. 395. *Oct. T.*, 1879.

Supreme Court of Pennsylvania, in and for the Western District.
October and November Term, 1880.

PENNA. R. R. Co., Pl'ff in E., D'f't below,
vs.
ANNIE M. PRICE *et al.* } No. 274.

Hampton & Dalzell.
Barton & Sons.

Costs.

Writ, att'y's, p'd	$6 00
Att'y, S. for P. in E.	4 00
Pro., S. & op'n.	8 00
Total	$18 00
Record for S. C. U. S.	$25

Precipe and affidavit and recognizance filed and writ issued, rule, &c., Sept. 27, 1880.
Record returned Nov'r 10, 1880.
Errors assigned Nov'r 10, 1880.
Argued Nov'r 12, 1880.

Jan'y 3, 1881. The judgment is reversed, and judgment is now entered for the defendant below, *non obstante veredicto.*
Opinion by Paxson, J.; (Turnkey, J., dissents).

Feb'y 14, 1881. Writ of error from Supreme Court of U. S., & citation, with service on H. & D. endorsed thereon, also bond approved by Bradley, J., filed.

I do hereby certify that the foregoing is a true copy of the docket entries of proceedings in this court, and that hereto attached is a true copy of the opinion of this court, and also of the record certified from the court below in the case stated in the caption hereto, as the same are on file in my office.
Witness my hand and the seal of said court.
[SEAL.] J. B. SWEITZER, *Prothonotary.*
No'r 4, 1881.

Endorsed: No. —. —— Term, 18—. Supreme court of Pennsylvania, western district. ——— *vs.* ———. Remittitur.

2 In the Supreme Court of Pennsylvania for the Western District, *ss.*

Error to the Common Pleas No. 2 of Allegheny County.

THE PENNSYLVANIA RAILROAD COMPANY, operating the Western Pennsylvania Railroad,

vs.

ANNIE M. PRICE.

The opinion of the court was delivered at Philadelphia, Jan'y 3d, 1881, by Paxson, J. (Turnkey, J., dissents.)

The special verdict finds all the facts necessary to an intelligent consideration of this case. The deceased, A. J. Price, was, at the time of the accident, resulting in his death, a route agent of the United States Post Office Department, duly appointed and commissioned. His route was on the Western Pennsylvania railroad, between Allegheny City and Blairsville. His duties were those incident to the position of mail agents. While engaged in the performance of those duties on the 23d day of July, 1877, he was killed by a collision on the road. The collision was found to be the result of the negligence of the employees of the defendant company. The

3 single question to be decided is, whether the deceased was a passenger within the meaning of the act of 4 April, 1868, P. L., 58. The first section of said act is as follows: "That when any person shall sustain personal injury or loss of life while lawfully engaged or employed on or about the roads, works, depots, and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employee, the right of action or recovery in all such cases against the company shall be such only as would exist if such person were an employee: *Provided*, That this section shall not apply to passengers."

It was conceeded by the learned judge who ruled the cause below, and admitted upon the argument here, that the deceased came within the precise terms of the act of 1868. Indeed, this is apparent from the facts found by the special verdict. But it is claimed that he comes also within the exceptions, and was a passenger within the meaning of the act. This position, if not unsound, is certainly paradoxical. To be within the letter of an act of assembly, and at the same time within the exception, is a proposition that would hardly be pressed were not the defendant a railroad corporation.

4 The act of 1868 has been before this court upon several occasions. Its constitutionality was affirmed in Kirby *vs.* The Railroad, 26 P. F. S., 306. Other questions arising under it was considered in Mollinieu *vs.* The Railroad, 31 P. F. S., 366, and Ricard *vs.* The Railroad, 8 Norris, 193. The point now raised is new, and was not considered in either of the cases cited. It involves a construction of the proviso of the act excepting passengers from its operation. Just here it is important to consider the mischief it was intended to remedy. Prior to its passage it had been held in numerous cases in this State that an employee could not recover against the company in whose service he was for personal

injuries resulting from the negligence of a fellow servant. This was settled law. But the non-liability for damages on the part of the company ceased there.

In the Catawissa Railroad Company *vs.* Armstrong, 13 Wright, 186, it was held: "That where the deceased was in the sole employ of one railroad company who had the right to run their trains over the others road, the plaintiff is not precluded from recovery on the ground that her husband was in the same general employ with the defendant's servants. The rule that where several persons are in the same general employment, and one is injured from the carelessness of another, the employee is not responsible, is not to be extended beyond the limit of the adjudged cases.

5 At the time this decision was rendered the law seemed to contemplate but two classes of persons on railroad trains: 1st. Passengers who paid, or who travelled by virtue of a contract relation with the company; and 2d, employees who were in the service of the company. The act of 1868 was manifestly intended to create a third class, who were neither employees nor passengers, namely, persons who are lawfully engaged or employed in or about the roads, works, depots, and premises of a railroad company, or in or about any train or car therein, of which such person is not an employee. This class, prior to the act of 1868, were entitled, under the decision in Catawissa Railroad Company *vs.* Armstrong, *supra*, to recover against the company for injuries resulting from the negligence of an employee. But the employee, if injured by the negligence of those whom I have designated as the third class, had no remedy against the company. He could only recover against the person whose negligence caused the injury, and as such persons were generally irresponsible pecuniarily, the employee had practically no remedy, yet he was in daily peril of injury from the negligence of persons of the 3d class. The Legislature, doubtless, saw that

6 it was unjust to give the non-employees such an advantage, and also that the company should be held liable in damages to such persons who, although lawfully upon the road, were not under its control. The act of 1868 places persons in the third class upon the same plane as the employees of the company. There is strict justice in this. No good reason can be shown why the non-employees should have higher rights than employees. Their compensation is usually equal, if not greater; they enter upon the same dangerous employment, with full knowledge of its perils, and of their legal rights in cases of injury. The rule which prevents a recovery by an employee for the negligence of a fellow servant is based upon the soundest principles of public policy. Railroad accidents are usually the result of the carelessness of employees. However perfect the system by which trains are moved, the heedlessness of a single man may produce disaster. So long as employees understand that they take their lives in their hands in entering upon their duties, and that their own safety, as well as the welfare of their families, depends upon their care and vigilance, the travelling public will have reasonable assurance of safety. The rule that no recovery can be had for the negligence of a fellow servant

7 necessarily tends to increased vigilance on the part of the employees, and to that extent contrbutes to the public safety. Properly administered, it is wise and just.

Was the deceased a passenger within the meaning of the act of 1868? Looking at the mischief which the act was intended to remedy, the answer to this question is not difficult. The deceased was "lawfully employed upon the road." He was, therefore, within the precise language of the act, and must be held to have had the rights only of an employee, unless he comes within the exception. The word "passenger" in the proviso must be understood in its ordinary and popular signification. Had the question been asked of any person, intelligent or otherwise, upon this train, when the accident occurred, whether A. J. Price, the deceased, was a passenger upon said train, the answer would have been in the negative—that he was employed upon the train as a mail agent. Why, then, should we give to the proviso a forced construction, not warranted by its language and repugnant to our common sense?

It was urged that the deceased was a passenger, because under the act of Congress (section 4000) "every railway company car-
8 rying the mail shall carry on any train which shall run over its road, and without extra charge therefor, all mailable matter directed to be carried thereon, with the person in charge of the same." This act makes it the duty of the company to carry the mail agent without extra charge, but it no more makes him a passenger than it does the mail matter of which he has the care. The company has no control of him, as they have over passengers for whose safety they are responsible. He is not bound to observe any of the rules prescribed for the protection of passengers. He may expose his life in the most reckless manner. The mail car, like the baggage car, is a known place of danger. From its position, it is particularly exposed to destruction in cases of collision. The effect of the act of Congress is to make his position on the car a lawful one. Being lawfully upon the train, a recovery might possibly have been had for his death upon the duty to carry safely. Collett *vs.* The Railway Company, 16 Q. B., 984, & Nolton *vs.* Western Railway Company, 15 N. Y., 444, go to this extent. But here the act of 1868 comes in, and declares that persons employed upon the road shall have only the rights of employees of the company.

Pennsylvania Railroad Company *vs.* Henderson, 1 P. St., 315,
9 was decided prior to the passage of the act of 1868, and it was urged that the Legislature had this case in view when they inserted the proviso in question. Conceding this to be so, it proves nothing. There the plaintiff was a driver transporting his live stock upon the cars of the company. He had paid the freight on his stock, and at the same time received a pass for himself. He was travelling with his stock, and was as much a passenger as if he had been travelling with his trunk. He had a direct contract relation with the company. He was under the control of the conductor, and was bound to conform to the reasonable rules of the company the same as other passengers. I see little analogy between such a case and that of a mail agent, who has no contract relation with the

company, and who is not in any sense under its control. It may very well be that Henderson *vs.* The Railroad Company belongs to a class of cases intended to be covered by the proviso to the act of 1868. Other cases might be suggested to which it may possibly apply. They will probably come up in due time, and we will not anticipate them. It is sufficient to say that the Legislature doubtless considered that there were or might be such cases, and therefore added the proviso to save them from the operation of the act. But it would be attributing a want of intelligence to the law-making power to hold that it meant to designate as passengers men who were employed by the year upon the road as the mail agents of the Government.

The act of 1868 is very broad in its terms. It was said by our brother Gordon, in Rickard *vs.* North Pennsylvania R. R. Co., *supra*: "The comprehensive words 'engaged or employed' are used to embrace every imaginable manner by which any one may or might be brought in, upon, or about the roadway, cars, or works of a railroad company." Following this sound interpretation of the act we must regard it as intended to relieve railroad companies from liability for injuries to the class of persons enumerated therein. Yet the construction now claimed for it discriminated in favor of certain persons of this class, to the exclusion of all others. That is to say, those persons who by the accident of their position happen to be employed on the trains may recover for injuries, while others equally deserving, who do not ride with the trains, but are "employed or engaged in or about the roads, works, depots, and premises of the company," have no such right. To illustrate: Suppose the deceased, instead of being employed as mail agent, had been employed by the Government to carry the mail from the depot to the post office, and while so engaged about the depot had been killed by the negligence of the defendant's servants. In such case he would have been clearly within the act, and not within its exception. Can the mere fact that he was upon the train instead of being about the depot make any difference? We are of opinion the act contemplates no such distinction.

The learned judge of the court below places considerable stress upon Webster's definition of the word passenger as "one who travels in some conveyance, as a stage-coach or steamboat." The citation from Webster is not strictly accurate. His definition is "A passer or passer-by; one who is making a passage; a traveller, especially by some established conveyance; a person conveyed on a journey." Worcester defines the same word as follows: "One who passes or is on his way; a traveller, a wayfarer." It will be seen that the leading idea of these definitions is that a passenger is one who travels from place to place. Mere locomotion is not travel in the popular use of the term. There are conductors on short lines of railroad in this State who have passed over more miles in the course of their employment than any traveller of ancient or modern times; yet we would hardly call them travelled men. The sense given to particular words by our great lexicographers is always entitled to weight; yet where a word is used in an act of assembly regard

must be had to the circumstances surrounding its use. A more correct definition of the word in its legal sense would be: One who travels in some public conveyance, by virtue of a contract, express or implied, with the carrier, as the payment of fare, or that which is accepted as an equivalent therefor.

A mere trespasser, a person who steals a ride upon a train or who is employed thereon, is not a passenger within the meaning of the act of 1868, nor entitled to protection as such.

We are of opinion that the case comes within the act of 1868, and that the plaintiff is not entitled to recover.

The judgment is reversed, and judgment is now entered for the defendants below, *non obstante veredicto.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, J. B. Sweitzer, pro. S. C., W. D., do hereby certify that the foregoing, written on 13 pages, is a true copy of the opinion of the court, Paxson, J., in the case stated in the caption thereto, No. 274, of Oct. & Nov'r term, 1880, as the same is on file in my office.

Witness my hand and the seal of said court, this 15 day of April, 1881.

[SEAL.] J. B. SWEITZER,
Pro. S. C., W. D.

13 STATE OF PENNSYLVANIA, } *ss:*
County of Allegheny, }

In the Court of Common Pleas No. 2. No. 395, October Term, 1877.

ANNIE M. PRICE, widow of A. J. Price, & JESSIE PRICE, Stella Price, & Annie Price, minors, by their next friend & mother, Annie M. Price,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, operating the Western Penna Railroad. } 395. Narr.

Summons case to 1st Monday, Sept., 1877; aff't filed. Service accepted Sept. 3, 1877, by Hampton & Dalzell, atty's for def't; Sept. 10, 1877, aff't of defence filed; March 8, 1879, rule on def't to plead *sec. req.;* March 15, 1879, def't pleads not guilty; April 21, 1880, on trial list, and jury sworn; and now, April 22, 1880, verdict for pl'ffs in the sum of five thousand dollars ($5,000.00), subject to the opinion of court upon the question of law reserved. See paper filed. *Eo die* notes of trial and points of counsel, with answers of court thereto, filed Sept. 4, 1880. Upon consideration of the question of law reserved, it is ordered that upon payment of the verdict fee judgment be entered on the verdict in favor of the plaintiffs. *Eo die* opinion of court filed; Sept. 7th, 1880, sheriff's receipt for verdict fee filed, and judgment on the verdict; Sept. 28, 1880, writ of error filed.

From the record.

[SEAL.] J. O. BROWN, *Pro.*

14 In the Court of Common Pleas No. 2 of Allegheny County.

ANNIE M. PRICE, widow of A. J. Price, & JESSIE PRICE, STELLA Price, & Annie Price, minors, by their mother and next friend, Annie M. Price,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, operating the Western Pennsylvania Railroad.

Same summons in case to next return day, 1877.

BAYNE & MAGEE,

Aug. 29, 1877. *Att'ys for Pl'ffs.*

B. F. KENNEDY, Esq., *Pro.*

Statement of Facts upon which Plaintiffs Rely to Recover.

1. A. J. Price, late of Allegheny county, Pennsylvania, was killed on the evening of July 23, 1877, in a collision which occurred at or near Ginasuta station, on the Western Pennsylvania railroad, between the western bound passenger train, called the mail train, and an eastern bound passenger train called the Philadelphia express. The deceased was a man in good health, aged thirty years, and at the time of his death resided in the city of Allegheny. At the time of his death he was in the employ of the Government of the
15 United States, in the postal service as route agent between Blairsville and Pittsburgh, and in the mail car in said mail train, at his post of duty, and in virtue of a contract between the defendant company and the Post Office Department of the Government of the United States for the transportation and delivery of the mail matter of the United States.

2d. The said mail train while proceeding from Claremont down said railroad, a distance of two or three miles, was met by the said Philadelphia express when both were running at high rate of speed, and when said collision took place. By said collision the said mail car in which said A. J. Price was attending to his duties, as aforesaid, was broken up and destroyed, and immediately after said collision the said A. J. Price was found lying in the wreck of said mail car frightfully mangled, and dead, caused by said collision, and the negligence of the defendant company.

3d. The said A. J. Price left a widow, Annie M. Price, and three minor children, aged, respectively, Jessie Price, seven years; Stella Price, five years, and Annie Price, two years.

4th. The said collision was the result of the carelessness, negligence, and unskillfulness of the officers, agents, and employees
16 of the said defendant company, in running, control-ing, and directing said colliding trains. And the said plaintiffs are therefore entitled, under the statute in such case made and provided, to recover the value of the life of the said husband and father in the proportion of one-third to the widow, Annie M. Price, and two-ninths each to the said children, Jessie, Stella, and Annie Price.

The said A. J. Price's occupation was that of engraver, at which he could make about five dollars per day, and at the time of, and for a short time preceeding his decease, he was engaged as route

agent aforesaid, by which he could earn about four dollars per day, and the damages sustained by his family, the plaintiffs, are at least twenty thousand dollars.

ANNIE M. PRICE.

ALLEGHENY COUNTY *ss:*

Annie M. Price, above-named, being duly sworn, says: That the matters set forth in the foregoing statement are correct and true, to the best of affiant's knowledge, information, and belief.

ANNIE M. PRICE.

Sworn and subscribed, this 1 day Sept., 1877.

B. F. KENNEDY, *Pro.*

17 ALLEGHENY COUNTY, *ss:*

The Pennsylvania Railroad Company, a corporation created by the laws of the State of Pennsylvania, the *the* lessee of and operating the Western Pennsylvania railroad, also a corporation created by the laws of the said State, was summoned to answer Annie M. Price and Jessie Price, Stella Price and Annie Price, minors, who sue by their mother and next friend, Annie M. Price, of a plea of trespass on the case, &c. Whereupon the said plaintiffs, by Bayne & Magee, their attorneys, complain—

For that whereas, heretofore, to wit, on the 23d day of July, at ———, in the county aforesaid, Albert J. Price, who was the husband of the said Annie M. Price and the father of the said Jessie Price & Stella Price & Annie Price, and who then resided in the city of Allegheny, in the county aforesaid, did, on the day and year aforesaid, at the special instance and request of the officers and agents of said defendant corporation, and in pursuance of his duty as route agent, in the postal service of the United States, get upon and into a certain railroad mail car of said defendants, being part of a train then passing westward on said Western Pennsylvania railroad, called the mail train, at
18 the borough of Blairsville, in the county of Indiana, to be thence by said defendant corporation to the western terminus of the said Western Pennsylvania railroad, in the city of Allegheny aforesaid, safely carried. And the said defendant corporation did then and there, by its officers and agents, undertake and promise safely and securely to carry the said A. J. Price, in virtue of a certain contract with the Post Office Department of the United States, between the said borough of Blairsville and the city of Allegheny over and along the said railroad for the compensation paid to the said defendant corporation by the Post Office Department of the Government of the United States in compliance with the said contract. And said corporation defendant then and there, being a common carrier of persons, goods, and chattels, by means of and over and along said Western Pennsylvania railroad, and the said plaintiffs aver that the said defendant corporation did not keep and perform its said promise and undertaking to convey and carry the said A. J. Price safely and securely between the points aforesaid.

On the contrary, the said defendant, by its officers, agents, and employees, then managing, directing, and controlling said rail-
19 road, its motive power, rolling-stock, machinery, and trains, so negligently, carelessly, and unskillfully, managed, directed, and controlled said railroad, motive power, rolling-stock, machinery, and trains that the train aforesaid, in one of the cars of which, to wit, in the said mail car, the said A. J. Price then and there was as a passenger, and route agent aforesaid, collided with and run into and against another train then moving eastwardly on the same road, on the same track, and also owned, operated, controlled, and directed by the officers, agents, and employees of said defendant corporation, and then and there, by the force and violence of the collision aforesaid of the two trains of the defendant aforesaid, the mail car aforesaid, in which the said A. J. Price then and there was, was broken, crushed, and destroyed, and the said A. J. Price, by the force of the said collision, was then and there mangled, mutilated, and killed at the place of said collision, to wit, on the track of said road at or near the station of Ginasuta, in county of Allegheny aforesaid.

And the said plaintiffs further aver that the said A. J. Price died intestate, leaving a widow, the said Annie M. Price, and three
20 children, the said Jessie, Stella, and Annie Price, who are minors, and all of whom are the heirs-at-law of the said A. J. Price under the intestate laws of Pennsylvania.

And the plaintiffs further aver that the said A. J. Price, at the time of his death, was thirty years of age; and that prior to and up to that time he enjoyed good health, an accurate mind, and robust constitution, and was well skilled in his business, being that of the art of engraving, which he practiced up until a short space of time before the date of his death, aforesaid, to wit, thirty days, and from which he derived large gains and rewards, to wit, the sum of five dollars per day, and from —— day June, 1877, he was engaged in the business of route agent in the postal service of the United States aforesaid, in which he was well skilled, and from which he derived large gains and rewards, to wit, the sum of five dollars per day. And the plaintiffs further aver that the true value of the life of the said A. J. Price was at least twenty thousand dollars.

And by reason of the premises, and by force and virtue of the statutes of the Commonwealth of Pennsylvania, in such case made and provided, an action hath accrued to said plaintiffs to have, demand, and recover of and from said defendant coporation the sum of money aforesaid, the value of the life of said deceased, in the follow-
21 ing proportions, to wit: To said Annie M. Price, the widow of said deceased, one third part thereof, and to the said Jessie Price, minor daughter of said deceased, two ninth parts thereof; to said Stella Price, minor daughter of said deceased, two ninth parts thereof; to the said Annie Price, minor daughter of the said deceased, two ninth parts thereof; that is to say, to the said Annie M. Price, widow, $6,666.66; to the said Jessie Price, $4,444.44; to the said Stella Price, $4,444.44; to the said Annie Price, $4,444.44. And for the damages by them suffered and sustained by reason of the premises, which sum or sums the said defendant corporation has

hitherto unjustly neglected and refused to pay, although often requested so to do, to the damage of the said plaintiffs in the sum of thirty thousand dollars.

BAYNE & MAGEE,
Att'ys for Pl'ffs.

(Endorsed:) No. 395. October, 1877. Annie M. Price *et al. vs.* The Pennsylvania Railroad Company, operating the Western Penna. R. R. Co. Rec. & *narr.* Iss'd Sept. 1, '77. Bayne & Magee, for pl'ffs.

22 ALLEGHENY COUNTY, *ss:*

[SEAL.] To the sheriff of said county, Greeting:

We command you that you summon the Pennsylvania Railroad Company, operating the Western Pennsylvania Railroad Company, so that it be and appear before our court of common pleas, No. 2, to be holden at the city of Pittsburgh, in and for said county, on the first Monday of September next, there to answer Annie M. Price, widow of A. J. Price; and Jessie Price, Stella Price, and Annie Price, minors, by their mother and next friend, Annie M. Price, of a plea of trespass on the case. And have you then and *that* there this writ.

Witness the Hon. Thomas Ewing, resident judge of our said court, the 1st day of Sept., A. D. 1877.

B. F. KENNEDY, *Proth'y.*

(Endorsed:) 395. October, 1877. Annie M. Price *et al. vs.* Penna. R. R. Co., operating, &c. Summons case to first Monday of Sept., 1877. Service accepted by Hampton & Dalzell, att'ys for def'ts, Sept. 3, 1877. So answers. R. H. Fife, sh'ff. Sh'ff, $1.00. We acknowledge service of this writ. Hampton & Dalzell, Sept. 3, 1877. B. & M., att'ys for pl'ffs.

23 In the Court of Common Pleas, No. 2, of Allegheny County. Oct. T., 1877.

ANNIE M. PRICE *et al.*
vs.
PENNA. R. R. Co., operating The Western Penna. R. R. } No. 395.

INDIANA COUNTY, *ss:*

Before me, the undersigned, personally came Robert Spencer, an agent in this behalf of defendant company, who, being duly sworn according to law, deposes and says: That said company has a full, just, and legal defense to the plaintiffs' claim in this, and avers—

First. That at the time of his death the said A. J. Price was virtually an employee of the defendant company, having no rights against defendant company other than those of an employee; and that the plaintiffs cannot recover in this case, as he is advised and verily believes, because if the death of the said Price resulted from the negligence or carelessness of any party, such negligent or careless party was his co-employee. Deponent further avers, as he is ad-

vised and verily believes, that said Price was subject to the provisions of the first section of an act of Assembly, approved April 4, 1868, which provides:

"When any person shall sustain personal injury or loss of life while lawfully engaged or employed on or about the roads,
24 works, depots, and premises of the railroad company, or in or about any train or car therein or thereon of which company such person is not an employee, the right of action to recover in all such cases against the company shall be such only as would exist if such person were an employee; provided, however, that this section shall not apply to passengers."

Second. Deponent avers that said company was not guilty of any such carelessness, negligence, or unskillfulness upon the part of its officers, agents, or employees as gives the plaintiffs a right in law to recover in this case, and denies that the plaintiffs are entitled to recover the amount of damages claimed or any other amount whatsoever against the said company.

All of which defendant expects to be able to prove upon trial of this cause.

ROB'T SPENCER.

Sworn and subscribed before me, this 8 day of Sept., 1877.
[SEAL.] W. R. TURBY, *N. P.*

(Endorsed:) 395. Oct. term, 1877. Price Heirs *vs.* Penna. R. R. Co., operating W. P. R. R. Co. Aff 't of defense. Filed Sept. 10, '77. H. & D.

25 PRICE
vs.
PENN'A R. R. Co., operating the West Penn. R. R. } 395. Oct. T., 1877.

Put on time docket.

JNO. BARTON, & BAYNE & MAGEE,
Att'ys for Pl'ffs.

B. F. KENNEDY, *By Per.*

Sept. 18, 1879.

Endorsed: 395. Oct. T., 1887. Price *vs.* P. R. R. Rec. for June docket. Barton, Bayne & Magee.

Notes of Trial.

ANNIE M. PRICE, widow of A. J. Price, and Jessie, Stella, and Annie Price, by their mother and next friend, children,
vs.
THE PENN'A Co., operating the Western. } 395. Oct. T., 1877.

Case. Plea, not guilty.

Barton, for pl'ff; Hampton & Dalzell, for d'f't.
April 21st, duly sworn.

ANNIE M. PRICE sworn — pl'ff:

26 Widow of Alfred J. Price; he died 23 July, 1877; we were residing 201 East street, Allegheny City; he was route agent on West Penn. R. R., between Allegheny City and Blairsville; commission produced in U. S. post office; married 7½ years; children, Jessie, Stella, and Annie; eldest then, 6 years; youngest two at that time, Stella over four; husband's age, 30 years 12 July, 1877; good health, good habits; wages, $980 per year; by trade a silver-plater. Commission in evidence, dated 20 March, 1877.

GIBBS KENNEDY sworn:

On 23d July, 1877, engineer on mail train on West Penn. R. R., from Allegheny City to Blairsville; about ⅛ mile east of Guiasuta station, 5.17 p. m., train collided with second section of market train off Pa. R. R.; Phil'a extra mail train coming west; we were going at about 30 miles per hour; saw engine of other train coming east about 250 or 300 yards; backed; did all I could to stop off my own engine; trains wrecked; knew Price; had seen him on train, and had spoken; saw him on train about 30 miles east taking mail on train; his station was on the mail train; a partition in the baggage car; an end taken for mail purposes.

27 Admitted that Mr. Price was in the mail car in discharge of his duty at the time of collision, and was killed there; also it is admitted that the Penn'a R. R. Co. was before and at the time of the accident operating the West Penn. R. R.

H. M. FORRESTER sworn:

Conductor on mail train coming west on 23 July, 1877; on time.

H. Suaman sworn.

George M. Court sworn.

Mrs. PRICE recalled:

Husband made $15 to $18 per week.

J. Wheeler sworn.

Valentine Ludwick sworn.

Act of Congress approved A. D. 1875, Sec. 4002 Revised Statutes, p. 773, chap. —, in regard to railway service of post office.

Offer to show the connection with the other evidence that A. J. Price was on the train as a route agent, under pay from the U. S. for his transportation, &c.

Objected to, as incompetent and irrelevant, as the law (act of Congress) does not declare that the route agent shall be counted
28 free or as a passenger by the Co., but only that a suitable car with furniture & fixtures shall be provided for.

Incompetent and irrelevant.

Objection overruled, & bill sealed for def't.

THOS. EWING. [SEAL.]

Defendant's Testimony.

Act of Assembly approved April 4, 1868, P. L., p. 59.

Resolution of board of directors of Pa. R. R., May 3d, 1875, accepting provisions of above act of Assembly of 4th April, 1868.

GEORGE H. ANDERSON sworn:

Postmaster at Pittsburgh.

Mr. Price was route agent from Pittsb'g to Blairsville. Printed vol. shown witness; says it is an official publication of the regulations of the Post Office Department, included in which is the regulations for route agents.

Defendant's counsel now offers the official regulations identified by witness Anderson, so far as relates to route agents. In connection with Sec. 4024 of Revised Statutes U. S. Also, Sec. 161 U. S. Revised Statutes; Sec. 615, on p. 145 of regulations.

29 John Martin sworn.

And now, April 22, 1880, the plaintiffs' respectfully request the court to charge the jury as follows:

1. That if the jury find from the evidence that A. J. Price, the deceased, at the time he was killed was a route agent in the employ of the United States, and was at his post in discharge of his duty, that then under the act of Congress regulating the U. S. mail service, 4002 U. S. Statutes at Large, he (in law) is to be regarded as a passenger, and not as an employee of the company defendant, and the defendant's liability is that of a carrier of passengers for hire.

(Per Cur.) This point is affirmed *pro form.*, and the question is reserved.

2d. That the defendant company were bound to law to use and employ in operating their road proper machinery, locomotives, and cars, road-bed, road-way, and tracks, and that if the jury are satisfied that it did not do so, and that the collision in this case was the result of neglect of the officers in charge of the running of the
30 trains on the road to give explicit and proper instructions as to the time and manner of running the trains, that then the def't is liable for injuries resulting from such causes.

3d. If the jury find the facts to be from the evidence that the def't corporation by its officers placed an additional extra train on the road that day to pass east over the road without giving proper notice to the employees in charge of the other trains to warn them of the fact, and that the result was a collision with another train coming west, which caused the death of the said A. J. Price, that then the def'ts are liable even if Price is to be governed by the rule applicable to employees.

(Per Cur.) The second and third points are refused, for the reason that the evidence in the case does not prevent the submission of the question to the jury.

To which refusal of the court to affirm the 2d & 3d points counsel for the plaintiff excepts, and thereupon bill sealed for plaintiffs.

THOS. EWING. [SEAL.]

31 The court is respectfully requested to charge the jury on the part of the defendant that—

If they *they* found from the evidence that Albert Price, dec'd, was at the time of his death in the service of the United States as a route agent between Allegheny City and Blairsville, in the State of Penna., and was killed by a collision of two trains of the defendant while on duty as such route agent in the mail department of the baggage car attached to the mail train on which he was, that as matter of law he was within the terms and provisions of the act of April 4, 1868, given in evidence; and if they further find that said act was duly accepted by said company on the 13 day of April, A. D. 1868, then the plff's cannot recover.

Answer. This point is referred *pro forma*, and the question of law raised thereby is reserved.

2d. That as matter of law arising out of the evidence given in the case, Albert Price, dec'd, was not at the time of his death a passenger, and plaintiffs cannot recover.

3d. That the act of April 4, 1868, as matter of law, was constitutional and binding on said Albert Price under the evidence in this case as a police regulation, and by reason thereof the plain-
32 tiffs cannot recover.

Answer. The 2d and 3d points are refused *pro forma*, and the question is reserved.

5. That as matter of law the pl'ffs, if the court should refuse the foregoing points, cannot recover a sum greater that five thousand dollars.

Answer. This point is affirmed under the authority of the Penna. R. R. Co. *vs.* Langdon. Aside from that decision I would have no doubt that the constitution had abrogated the limitation.

(Notes of trust filed April 22, 1880.)

Verdict.

We find for the plaintiff in the sum of ($5,000) five thousand dollars, subject to the opinion of the court on the question of law reserved, to wit: We find that A. J. Price at the time of his death was route agent of the United States Post Office Department, duly appointed and commissioned, his route being on the Western Pennsylvania railroad from Allegheny City to Blairsville, in the State of Pennsylvania; that his duties as such agent required him to be on the mail car on the mail train of said road to receive and
33 deliver mail matter; that for the purpose of his business and that of the postal department, and in accordance with the laws of the United States and the regulations of the Post Office Department, and acceptance thereof by the railroad company, one end of the baggage car on the mail train was divided off and fitted up for the use of the Department in carrying the mails, and that the duties of the said route agent required him to be in said room in the car during the running of the train; that said Price was daily on said train, making a round trip from Allegheny City to Blairsville and return; that on the 23d day of July, 1877, while at his post in his room on said car, Mr. Price was killed in a collision of the mail train coming west with another train of the defendant company going east.

That said collision was caused by the negligence or misconduct of the conductor and engineer in charge of the train going east in neglecting or disobeying orders and in failing to take necessary precaution to avoid a collision.

We find that the Pennsylvania Railroad Company, by resolution dated April 16, 1868, accepted the provisions of the act of
34 Assembly, approved 4th April, 1868, (P. L., p. 59,) and that [at the] time of the collision the Pa. R. R. Co. was operating the Western Penna. railroad under lease.

If, under this finding of facts, and under the acts of Congress and acts of Assembly offered in evidence, and the postal regulations in evidence, the court should be of the opinion that the plaintiffs, as widow and children of deceased, are entitled to recover, then judgment to be entered on the verdict in favor of the plaintiffs.

If the court should be of the opinion that the law is with the defendant, then judgment to be entered in favor of the defendant *non obstante veredicto.*

ANNIE M. PRICE *et al.*, Widow and Heirs of A. J. Pierce, dec'd,
vs.
THE PENNA. R. R. Co., operating the West. Penn. R. R.
} No. 395. October Term, 1877.

Question of law reserved.

Opinion by EWING, *P. J.:* While lawfully on the train of the defendant company, on the way from Blairsville to Pittsburgh, the husband and father of the plaintiffs was killed by a collision of trains resulting from the gross negligence of defendant's agents.
He was not an employee of the company. He was in his
35 proper place, guilty of no misconduct or negligence. The plaintiffs are clearly entitled to recover unless precluded therefrom by the terms of the 1st section of the act of 4 April, 1868, (Pl., p. 58,) which is as follows: "That when any person shall sustain personal injury or loss of life while lawfully engaged or employed on or about the road's works, depots, and premises of a railroad company, or in or about any train or car thereon of which such person is not an employee, the right of action and recovery in all such cases against the company shall be such only as would exist if such person were an employee, provided *that this section shall not apply to passengers.*"

The plaintiffs' husband was route agent for the U. S. Post Office Dep., travelling daily over defendant's road from Allegheny City to Blairsville and return, in charge of the U. S. mails, receiving and delivering mails at intermediate stations, and assorting and delivering the mails at the termini of the trip.

Under the statutes and the regulations of the Post Office Dep. the def't company received a gross sum for transporting the mails and the route agent, likewise furnishing a car properly fitted up for the purpose.

36 Is the case governed by the act of Assembly above quoted? At common law the action would have abated at the death of A. J. Price. If plaintiffs are entitled to recover, it is by virtue of the 26 Sec. of the act of 31 April, 1846, chartering the company, and the act of 15th April, 1851.

The right to recover in such cases being a statutory right, the Legislature had power to modify and restrict that right as to any or all classes of persons. We are therefore unable to see that the fact that Mr. Price was, at the time of the injury, in the employ of the U. S. Government has any effect on the question. We know of no sanctity or superior right created by such employment. Nor do we conceive that it would affect the question had the deceased been on an inter-State route. The right to recover is based wholly on the laws of Pennsylvania.

The act of 1868 has received authoritative construction in Reisby *vs.* Pa. R. R. Co., 76 Pa., 506, and in Richard *vs.* The W. Pa. R. R. Co., 7 Weekly Notes, 37. The terms of the act are very broad. It includes all persons *lawfully employed* in or about the roads, trains, cars, etc., of the R. R. company.

The terms of the section being so broad, the mind of the Legislature seems to have been directed to the danger of going be-
37 yond the supposed evil intended to be remedied, and the proviso is added: "*This section shall not apply to passengers.*"

In our minds it is very clear that Price was "lawfully employed on the train" of the defendant at the time of his injury, and unless saved by the proviso as to passengers the plaintiffs cannot recover.

Was Price a passenger? Webster defines passenger "one who travels in some conveyance, as a stage-coach, or steamboat." The fact that a man is employed on his travels does not exclude him from being a passenger in the popular sense of the term, nor does it in view of the statute, else why the proviso excepting passengers?

While in our own view of the case the deceased was carried for hire, in view of the many authorities, some of which will be hereafter referred to, we deem it immate- as to whether or not he was carried for hire. Nor is it material that he was carried on the contract of another with the defendant.

In the case of Collett *vs.* L. & N. W. Railway, 16 Q. B., 984, plaintiff was a mail agent, travelling, in the course of his employment, on defendant's train. The mail and agents were carried
38 under the directions of an act of Parliament and regulations similar to those of our case, except that the agent was to be carried free. Pl'ff was injured by negligence of defendant's servants. It was held to be immaterial that he was carried under a contract with the government. *That he was a passenger, carried by consent of the company, to whom they owed the duty to carry safely.*

In the case of Nolton *vs.* Western R. R. Co., 15 N. Y., 444, pl'ff was a mail agent, carried under the same statute and orders as was Price, when he, pl'ff, was injured by the gross negligence of defendant's employees. Held that he was entitled to recover as a passenger, to whom the company owed a duty.

In Yeomans *vs.* The Centra Costa Steam Nav. Co., 44 Cal., 71, the

plaintiff was agent or messenger for Wells, Fargo & Co., and was carried under a contract of the express Co. with the defendants, whereby the def't agreed to carry the freight and messenger for a fixed monthly compensation. The plaintiff, while on the car of the def't company, was injured by reason of the negligence of the defendant's servants. Held that the plaintiff was a passenger and entitled to recover.

In Blair *vs.* The Erie R. R. Co., 66 N. Y., 313, the plaintiff was an express agent on the train in the course of his business, in
39 pursuance of a contract whereby the R. R. Co. had contracted to transport the freight of the express Co. for a certain consideration, and to transport the money-safes and messengers free of charge. Pl'ff was allowed to recover. In reargument of the case the court held the agent as a passenger carried without hire.

In Hammond *vs.* N. E. R. R. Co., 6 Richardson (S. C.), 130, the plaintiff was a route agent in the performance of his duty when injured by the negligence of def't's employees. The conditions were precisely similar to those of our case. The court held pl'ff entitled to recover, clearly putting it as a case of a passenger, although not in terms calling him such.

In Pa. R. R. Co. *vs.* Henderson, 1 P. F. Smith, 315, p'lff's husband was a drover in charge of his cattle on defendant's train, he riding on a drovers' pass, directing the conductor of the passenger car attached to the stock train *to pass the bearer in charge of his stock* in certain cars.

In an exhaustive opinion the court held the plaintiff entitled to recover for the death occurring by the negligence of defendant's agents. Throughout the whole opinion the decedent is treated as a passenger. Numerous other cases are to the same effect. In most of these cases the persons injured was employed on the train,
40 the travel being but an incident of the employment.

In the case before us, while Price was employed, he was not in any way responsible for the running of trains. The conductor had no more power over him, and no less than over any other passenger on the train. He had his proper place on the train, but that and his regular travels was all that distinguished him from the other passengers.

The case of the Pa. R. R. Co. *vs.* Henderson, and several of the other cases cited, had been decided before the passage of the act of 1868.

It is a fair presumption that the Legislature had this class of cases in view when the proviso excepting passengers was inserted.

Being of the opinion that the deceased, at the time of the injury, was a passenger on defendant's train, within the meaning of the proviso of 1868, the plaintiff is entitled to recover.

Order for Judgment.

And now, September 4, 1880, upon consideration of the questions of law reserved, it is ordered: That upon payment of the verdict fee judgment be entered on the verdict in favor of the plaintiffs.

PER CURIAM.

41 (Endorsement:) No. 395. Oct. term 1877. Annie M. Price *et al. vs.* The Penna. R. R. Co. Opinion and order for judgment on question of law reserved. Filed Sept. 4, 1880.

PITTSB'G, *Sept.* 7, 1880.

Received from Barton & Sons four dollars, verdict fee in the case of Annie M. Price *vs.* The Penna. R. R. Co., operating the West. Penn. R. R., being No. 395 of Oct. term, A. D. 1877.

THOMAS HUNTER, *Sheriff.*

(Endorsed:) "Filed Sept. 8, 1880."

42 *Plaintiffs' Bill of Costs.*

In the Court of Common Pleas No. 2 of Allegheny County. Oct. Term, 1877.

PRICE
versus
WEST. PENN. R. R. COMPANY. } No. 395.

George M. Court, in attendance two days	$2 00
— miles direct travel	06
Hugh Forrester, in attendance one day	1 00
30 miles direct travel	1 80
Kennedy, in attendance 1 day	1 00
90 miles direct travel	5 40
H. Suaman, in attendance 2 days	2 00
— miles direct travel	06
V. Ludwig, in attendance 2 days	2 00
— miles direct travel	06
F. Waler, in attendance 2 days	2 00
Mary Price, in attendance 2 days	2 00
— miles direct travel	06
H. Suaman, serving subpœna, 6 witnesses	3 00
270 miles distance, @ 10 cts.	27 00
Subpœna	25
Whole amount of bill	$49 69

ALLEGHENY COUNTY, *ss:*

Personally appeared before me, H. Suaman, agent for pl'ff in this behalf, who, being duly sworn, saith the above bill of costs is correct; that the witnesses named were necessary, material, and in attendance as above stated.

HENRY SUAMAN.

Sworn and subscribed cu-am, this 5 day of May, 1880.

[SEAL.] A. K. STEVENSON,
Notary Public.

43 [Endorsed:] No. 395. Oct. term, 1877. Price *vs.* West Penna. R. R. Company. Plaintiffs' bill of costs. Amount, $49.69. Filed May 5, 1880. Barton & Sons.

44 WESTERN DISTRICT OF PENNSYLVANIA, *sct.:*

The Commonwealth of Pennsylvania to the judges of the court of common pleas No. 2 for the county of Allegheny, Greeting:

Because in the record and process, and in rendering the judgment in a certain plaint which was in our said court before the judges of the same court by our writ between Annie M. Price, widow of A. J. Price, Jessie, Stella, & Annie Price, minors, by their mother & next friend, Annie M. Price, pl'ffs, & Penna. R. R. Co., operating the West. Penna. R. R. Co., at No. 395, Oct. T., 1879, as it is said, manifest error hath intervened, to the great damage of the said d'f't, as by complaint of the same d'ft we have received information, we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you, that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of the supreme court of the said Commonwealth, at a supreme court to be held at Pittsburgh, in and for the western district of the said Commonwealth, on the first Monday of Oct. next, and this writ, that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our customs ought.

Witness the Honorable George Sharswood, LL. D., chief justice of our said supreme court, at Pittsburgh, the 27th day of Sept., in the year of our Lord one thousand eight hundred and 80, and of the Commonwealth the 105.

[SEAL.]

J. B. SWEITZER,
Prothonotary of Western District.

Allowed by ——.

45 [Endorsed:] No. 395. Oct. term, 1879. No. 274 of Oct. and Nov. term, 1880. Supreme court. Penna. Railroad Co., pl'ff in E., d'f't. below, *vs.* Annie M. Price *et al.* Writ of error to the com. pleas of Allegheny Co. Returnable to first Monday of Oct., 1880. Precipe, affidavit, and recognizance filed and writ issued Sept. 27, 1880. "Rule to appear and plead at return of writ." Nov'r 10, '80. Ret'd. N. B.—12 days' notice to the party or its counsel below is necessary to compel an appearance. J. B. Sweitzer, pro. W. D. Filed Sept. 28, '80. Att'ys p'd $6. Hampton & Dalzell, att'ys for P. in E.

COMMONWEALTH OF PENNSYLVANIA, }
County of Allegheny, } *ss:*

To the honorable the judges of the supreme court:

The record and process within mentioned, with all things touching the same, before the judges within named at the day and place

within contained in a certain record to this writ annexed, we do certify and send as within we are commanded.

THOS. EWING. [SEAL.]

46 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Pennsylvania Railroad Company, operating the Western Pennsylvania railroad, plaintiff in error, and Anna M. Price, widow of Alfred J. Price, and Jessie Price, Stella Price, and Annie Price, minors, by their mother and next friend, Anna M. Price, defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of
47 or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendants in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eleventh day of February, in the year of our Lord one thousand eight hundred and eighty-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

48 [Endorsed:] 274. O. & N. T., 1880. Served on us Feb'y 14, 1881. Hampton & Dalzell, att'ys for Penna. R. R. Co. Original. Filed Feb'y 14, '81.

49 The United States of America to the Pennsylvania Railroad Company, operating the Western Pennsylvania railroad, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein Anna M. Price, widow of Alfred J. Price, deceased, and Jessie Price, Stella Price, and Annie Price, minors, by their mother and next friend, Anna M. Price, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, Associate Justice of the Supreme Court of the United States, this eleventh day of February, in the year of our Lord one thousand eight hundred and eighty-one.

JOSEPH P. BRADLEY.

50 [Endorsed:] O. & N. T., 1880. Served on us Feb'y 14, 1881. Hampton & Dalzell, att'ys for Penn'a R. R. Co. Original. Filed Feb'y 14, 1881.

51 In the Supreme Court of Pennsylvania, for the Western Dist., *ss.* No 274. Oct. & Nov. Term, 1880.

PENNSYLVANIA R. R. Co. *v.* ANNIE M. PRICE.

Error to Court of Com. Pleas, No. 2, of Allegheny County.

Know all men by these presents, that we, Annie M. Price, as principal, and Val. Luding & Chas. T. Brown, as sureties, are held and firmly bound unto the Pennsylvania Railroad Co., operating the Western Pennsylvania Railroad Co., in the full and just sum of two hundred and fifty dollars, to be paid to the said Pennsylvania Railroad Co., its certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this first day of February, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas, lately, at a session of the supreme court of Pennsylvania, in a suit depending in said court, between Annie M.
52 Price, widow, Jessie Price, Estella Price, and Anna Price, minor children of Alfred T. Price, dec'd, as pl'ffs, and the Pennsylvania Railroad Co., operating the Western Pennsylvania Railroad Co., d'f'ts, final judgment was rendered against the said Annie M.

Price, widow, and said Jessie, Estella, & Anna Price, d'f'ts in error in said action, and the said Annie M. Price, widow, & Jessie Price, Estella Price, & Anna Price, minors of said Alfred T. Price, dec'd, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Pennsylvania Railroad Co., pl'ffs in error in said action, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Annie M. Price, widow, & Jessie Price, Estella Price, and Anna Price, by their next friend, Annie M. Price, shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

ANNIE M. PRICE. [L. S.]
VAL. LUDING. [L. S.]
CHAS. T. BROWN. [L. S.]

Approved by—
M. W. ACHISON,
U. S. Dist. Judge, W. D. of Penn'a.

The within bond is approved.

JOSEPH P. BRADLEY,
Ass. Justice Sup. C't U. S.

53 WESTERN DIST. OF PENN'A, *ss:*

I, J. B. Sweitzer, pro. S. C., W. D., do hereby certify that the foregoing is a true copy of the recognizance to bail in error in the said case, approved by Bradley, J., as the same is now on file in my office.

Witness my hand and the seal of said court, at Pitts., this 12 day of Nov., A. D. 1881.

[SEAL.] J. B. SWEITZER,
Pro. S. C., W. D.

Endorsed on cover: Pennsylvania supreme court. No. 166. Anna M. Price, widow of Alfred J. Price, and Jessie Price, Stella Price, and Annie Price, minors, by their mother and next friend, Anna M. Price, plaintiffs in error, *vs.* The Pennsylvania Railroad Company, operating the Western Pennsylvania railroad. Filed November 19, 1881.

113-218

Office Supreme Court U. S.
FILED.
JAN 10 1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 166.

ANNA M. PRICE, WIDOW OF ALFRED J. PRICE AND JESSIE PRICE, STELLA PRICE AND ANNIE PRICE, MINORS BY THEIR MOTHER AND NEXT FRIEND ANNA M. PRICE, PLAINTIFFS IN ERROR,

vs.

THE PENNSYLNANIA RAILROAD COMPANY, OPERATING THE WESTERN PENNSYLVANIA RAILROAD, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES A. RAY,
EDWARD A. NEWMAN,
THOMAS M. BAYNE,
For Plaintiffs in Error.

Price, widow, and said Jessie, Estella, & Anna Price, d'f'ts in error in said action, and the said Annie M. Price, widow, & Jessie Price, Estella Price, & Anna Price, minors of said Alfred T. Price, dec'd, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Pennsylvania Railroad Co., pl'ffs in error in said action, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Annie M. Price, widow, & Jessie Price, Estella Price, and Anna Price, by their next friend, Annie M. Price, shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

ANNIE M. PRICE. [L. S.]
VAL. LUDING. [L. S.]
CHAS. T. BROWN. [L. S.]

Approved by—
M. W. ACHISON,
U. S. Dist. Judge, W. D. of Penn'a.

The within bond is approved.

JOSEPH P. BRADLEY,
Ass. Justice Sup. C't U. S.

53 WESTERN DIST. OF PENN'A, *ss:*

I, J. B. Sweitzer, pro. S. C., W. D., do hereby certify that the foregoing is a true copy of the recognizance to bail in error in the said case, approved by Bradley, J., as the same is now on file in my office.

Witness my hand and the seal of said court, at Pitts., this 12 day of Nov., A. D. 1881.

[SEAL.] J. B. SWEITZER,
Pro. S. C., W. D.

Endorsed on cover: Pennsylvania supreme court. No. 166. Anna M. Price, widow of Alfred J. Price, and Jessie Price, Stella Price, and Annie Price, minors, by their mother and next friend, Anna M. Price, plaintiffs in error, *vs.* The Pennsylvania Railroad Company, operating the Western Pennsylvania railroad. Filed November 19, 1881.

113-218

Office Supreme Court U. S.
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Supreme Court of the United States.

No. 166.

ANNA M. PRICE, WIDOW OF ALFRED J. PRICE AND JESSIE PRICE, STELLA PRICE AND ANNIE PRICE, MINORS BY THEIR MOTHER AND NEXT FRIEND ANNA M. PRICE, PLAINTIFFS IN ERROR,

VS.

THE PENNSYLNANIA RAILROAD COMPANY, OPERATING THE WESTERN PENNSYLVANIA RAILROAD, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES A. RAY,
EDWARD A. NEWMAN,
THOMAS M. BAYNE,
For Plaintiffs in Error.

IN THE

Supreme Court of the United States.

ANNIE M. PRICE, widow of ALFRED J. PRICE and JESSIE PRICE, STELLA PRICE and ANNIE PRICE, minors by their mother and next friend, ANNA M. PRICE, plaintiff in error.

vs.

THE PENNSYLVANIA RAILROAD COMPANY, operating the WESTERN PENNSYLVANIA RAILROAD, defendants in error.

October Term, 1884.
No. 166.

STATEMENT.

The husband, of the plaintiff in error, suing in her own right, and representing the right of her minor children, was killed the 23d day of July, 1877, upon the cars and railroad of the defendant in error while lawfully in the line of his duty, under a commission from the United States appointing him route agent, dated March 20th, 1877, and his death was the result of "the negligence or misconduct of the conductor and engineer in charge of the train, going east, in neglecting or disobeying orders and in failing to take necessary precaution to avoid a collision."

SECTION 8. Act March 3d, 1865, p. 13, Statutes-at-large, United States, provides that "For the purpose of assorting and distributing letters and other matter in railway post offices, the Postmaster General may, from time to time, appoint clerks who shall be paid out of the appropriation for mail transportation."

SEC. 4000, Revised Statutes United States requires that "Every railway company carrying the mail shall carry on any train which may run over its road, and without extra charge therefor, all mailable matter directed to be carried thereon, with the person in charge of the same."

The 18th and 19th sections of Act of April 15, 1851, of the Pennsylvania Legislature, provides that no action for injuries shall abate by reason of death, etc., and "That whenever death shall be occasioned by unlawful violence or negligence and no suit for damages be brought, by the party injured during his or her life, the widow of any such deceased, or if there be no widow, the personal representatives may maintain an action for and recover damages for the death thus occasioned." And by the 1st Section of the act of the Pennsylvania Legislature of April 26, 1855, Section 1, it is also provided "That the persons entitled to recover damages, for any injury causing death, shall be the husband, widow, children or parents of the deceased and no other relation, and the sum recovered shall go to them in the proportion they would take her or his personal estate in the case of intestacy and that without liability to creditors.

The 2nd Section of said Act requires that the declarations shall state who are the parties entitled to take &c. See Brightlys Purdour Digest of Pennsylvania statutes, page 1094, title "Negligence."

This act was in force when the Act of April 4th, 1868, was passed, the 1st Section is as follows: "That when any person shall sustain personal injury or loss of life, while lawfully engaged or employed on or about the road, works, depot

and premises of a railroad company or in or about any train or car therein or thereon, of which company such person is not an employee, the right of action or recovery in all such cases against the company shall be such only as would exist if such person were an employee: *Provided*, That this section shall not apply to passengers."

The 16th Section of the Act of April 31st, 1846, to incorporate the Pennsylvania Railroad Company authorized an action by the wife to recover damages for the death of the husband. The jury found for the plaintiff in the sum of $5,000, subject to the opinion of the Court on the question of law reserved, whether the deceased, being route agent of the Post Office Department, lawfully in his place on the railroad train, engaged in the discharge of his official duties, his death caused by the negligence of the defendant, entitled the plaintiff to recover. The Court of Common Pleas held the company liable. The Supreme Court of Pennsylvania reversed this judgment and entered judgment for the defendant in error *non obstante veredicto*, which judgement the plaintiff in error here seeks to reverse.

The plaintiff in error makes the following assignments of error.

First. The Court below erred in reversing the judgment of the Court of Common Pleas, and entering judgment for the defendant in error.

Second. The Court below erred in entering a judgment for the defendant in error on the finding of facts, when it should have entered a judgment for the plaintiff in error for the sum of $5,000 with interest from September 4th, 1880.

Third. The Court below erred in reversing the judgment of the Common Pleas Court in favor of the plaintiff in error and rendering judgment for the defendant in error, when it should have affirmed the judgment of the Common Pleas Court.

BRIEF.

In the case of Callett vs. L. & N. W. R. R., 16 Q. B. 984, decided in 1851, the plaintiff was a route agent of the Post Office Department, traveling in the course of his employment on defendant's train, under authority of an Act of Parliament, like the United States statute in force here, and he was injured through the negligence of the railway employees. Erle J., in deciding the case said: "The defendants have a public duty to perform in conveying the servants of the public safely; the plaintiff has been injured by their neglect in the performance of that duty and has a right of action in consequence."

The case of Nolton vs. Western Railroad Company, 15 New York 444, was decided in 1857. The case was like the present one; the plaintiff being a mail agent and injured by the negligence of the servants of the railroad on which he was discharging his official duties. It was held that he was a passenger and the company owed the duty to carry him safely.

In P. R. R. Co., vs. Henderson (1 P. F. Smith) 51 Penn. St. R. 315, decided in 1865, a drover transporting his stock received a ticket stating that he assumed all risks &c. It was held in an action, by his wife, upon his death from an injury inflicted on the train, that he was a passenger, and as such a recovery could be had for the negligence of the railroad company. At the the time then, that the Act of Congress was passed to-wit: March 3, 1865, authorizing the appointment of postal clerks on railway trains, such officers in Pennsylvania while discharging their duties were entitled to all the rights and protection secured to passengers. This was the law as declared by the Courts in England and America under statutes like the one in force in Pennsylvania. After the passage of that Act, can the Legislature of Pennsylvania change the relation of the official from that of a passenger on the railroad to that of an employee of the railroad, because of the duties imposed upon him by law? Can the Legislature increase the

hazards attending the discharge of official duty, by depriving an officer because of his duties, of the protection he would otherwise receive? It is very clear that the Legislature could not tax the salary of the officer.

Dobbins vs. Commissioners Erie Company, 16, Pet. 435.

In the case of the Collector vs. Day 11, Wall 113, the following language is used by the Court: "It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, it subject to the control of another and distinct government can exist only at the mercy of that government. Of what avail are the means if another power may tax them at discretion?" May it not be added: Of what avail are the means, if another power may make their exercise attended with unusual danger.

When the Act of March 3d, 1865, was passed by Congress authorizing the appointment of clerks to travel on the mail trains and distribute the mail in railway post offices, as postal cars are called, the rights of the person accepting such oppointment were those of an ordinary passenger. His salary was regulated by the risk he incurred, as well as by the services rendered. An increase of the hazard incurred, must be met by an increase in his compensation, just as legally as a tax upon his salary involves such addition.

Both, legislatures and courts, have regarded the recovery of damages for injury or death resulting from negligence as a means of securing greater care from common carriers.

By the Act of April 4th, 1868, of the Pennsylvania Legislature, as interpreted by the Court below, the railroad com-

pany is released from a duty then existing toward an officer of the United States, because of the official services required of the officer. As to such officers an inducement to ordinary care existing as to others, is removed. Because letter carriers in discharging their duties are compelled to penetrate into all sorts of places and have intercourse with all sorts of people, may a State Legislature withdraw from them the protection of the law that surrounds others? May they be assaulted without redress? If any change may be made by any state, in the relation between the man and the public, or corporations discharging duties to the public, because the man assumes certain official duties, imposed by the United States, where can a limit be put to the change? Is not all legislation of this nature subjecting the means employed by the general government to the control of state legislation? If so, such legislation is necessarily void. But it is plain from the wording of the Act of the Pennsylvania Legislature that the law was not intended to apply to any one who, under the existing law and decisions was entitled to be classed as a passenger and toward whom the railroad companies assumed fixed liabilities. The rule of interpretation is thus stated: *Provided* that this section shall not apply to passengers." Legislation is directed to existing facts and conditions. The elements necessary to fix the *status* of a person with a railroad as a passenger, were already settled and determined, and the statute declares that it shall not be so construed as to include such persons.

The attempt, by a Court, to open up the question of what facts constituted a person a passenger upon a train, and change his status toward the company from what it was before the law was passed, would be the exercise of a legislative and not a judicial function.

When Congress passes a law stating the terms upon which *agricultural* lands may be entered, and declares that the law shall not apply to *mineral* land, this Court would not feel authorized to change the existing *status* of the public

domain and declare what was before then, known by law and decisions as *mineral* lands, to be under the law *agricultural* lands and subject to entry. Yet this is the effect of the decision in this case.

The plaintiff in error claims that under the Statutes of the United States, March 3d, 1865, Section 8 and Section 4000, Revised Statutes, and the commission of her deceased husband, the route agent of the Post Office Department was entitled to travel as a passenger upon the postal car. The Statute of Pennsylvania as given effect by the decision in this case denies that right.

We submit that the judgment of the Common Pleas Court was correct, and its reversal by the Supreme Court erroneous, and that judgment should be entered upon the verdict in favor of the plaintiff in error.

Respectfully submitted.

CHARLES A. RAY,
EDWARD A. NEWMAN,
THOMAS M. BAYNE,
For Plaintiffs in Error.

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Supreme Court of the United States.

OCTOBER TERM, 1884.

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BRIEF FOR DEFENDANT IN ERROR

BY

JOHN DALZELL.

Judd & Detweiler, Printers.

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BRIEF FOR DEFENDANT IN ERROR.

Alfred J. Price, whose widow sued on behalf of herself and children to recover damages for his death, was a citizen of Pennsylvania, resident in Allegheny county. In March, 1877, he became a route-agent of the United States Post Office Department, and it then became his duty to travel daily in a mail car over the Western Pennsylvania Railroad between Allegheny City and Blairsville, a comparatively short distance, all of which is within the State of Pennsylvania.

On July 23, 1877, he was killed in a collision on the railroad while in the performance of his ordinary duties.

The question in the court below was whether his widow and children could recover damages for his death. The supreme court of Pennsylvania held that they could not, and the contention upon the part of plaintiffs in error now is, that this Court can review and reverse that decision.

If such contention can be sustained, it must be on two grounds:

1. Because there is some Federal question involved, which gives this Court jurisdiction; and,

2d. Because the decision of the supreme court of Pennsylvania was erroneous.

Unless there be some Federal question involved the second question becomes unimportant in this discussion.

Even if important at all, we shall be satisfied to leave the vindication of the supreme court of Pennsylvania, with respect to its decision, to the opinion of that court.

As to the first question, then:

This Court has said in Home Ins. Co. *vs.* City Councils, 93 U. S., 121:

"Where a judgment or decree is brought to this Court by a writ of error to a State court for review, the case, to warrant the exercise of jurisdiction on our part, must come within one of three categories:

"1. There must have been drawn in question the validity of a treaty or statute of, or authority exercised under, the United States; and the decision must have been against the claim which either was relied upon to maintain.

"2. Or there must have been drawn in question a statute of, or authority exercised under, a State, upon the ground of repugnance to the Constitution, or a law or treaty of the United States; and the decision must have been in favor of the validity of the State law or authority in question.

"3. Or a right must have been claimed under the Constitution, or a treaty, or law of, or by virtue of a commission held or authority exercised under the United States; and the decision must have been against the right so claimed."

Furthermore:

"In order to give this Court jurisdiction in error of a State court it must appear affirmatively on the face of the record, not only that the Federal question was raised and presented to the highest court of the State for decision, but that it was decided, or that its decision was necessary to the judgment or decree rendered in the case."

Chouteau *et al. vs.* Gilson, 111 U. S., 200.
Citing Murdock *vs.* Memphis, 20 Wall., 590–636.

Other cases to the same effect and in point are:

Gill *vs.* Oliver, 11 Howard, 545.
Williams' Trustee *vs.* Oliver, 12 Howard, 124.
Ins. Co. *vs.* Treas'r, 11 Wall., 204.
Salomons *vs.* Graham, 15 Wall., 209.
Aicardi *vs.* The State, 19 Wall., 635.
Bailey *vs.* Maguire, 22 Wall., 216.
Beer Co. *vs.* Mass., 7 Otto, 25.

A consideration of the nature of the controversy in the court below, will make manifest that the judgment sought to be reviewed does not fulfill any of the requisites to this court's jurisdiction.

For the death of her husband Mrs. Price could have maintained no action at common law.

Whatever right she had was purely the creation of the Pennsylvania statute. Having been given of grace, such right could be at any time enlarged or modified by the giver, or even taken away altogether.

The Pennsylvania statute of April 15, 1851 (Purdon's Digest, p. 1094), gave, in certain cases, a right to recover damages for death resulting from negligence; and the supplementary act of April 26, 1855 (Purdon, p. 1094), indicated the persons entitled to recover; as, husband, widow, children, &c.

Such being the statute law, it was at the same time, by virtue of numerous decisions of the supreme court of Pennsylvania, undoubted law also, that no recovery could be had against an employer for injuries to, or death of, an employee in his service resulting from the negligence of a fellow-servant.

But many persons were in the habit of being lawfully engaged and employed about railroads whose relation to the railroad company, so far as liability to injury was concerned, was that of employees virtually, while their legal relation was that of strangers. An example of such state of things is seen where many railroads center in one depot. The em-

ployees of each are substantially in one general employment, while their contract relations are separate and distinct.

To remedy this apparent evil, the Legislature of Pennsylvania amended its statute law relating to remedies for negligence by the passage of the act of April 4, 1868:

"That when any person shall sustain personal injury or loss of life, while lawfully engaged or employed on or about the road, works, depot, and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employee, the right of action or recovery in all such cases against the company shall be such only as would exist if such person were an employee: Provided, That this section shall not apply to passengers."

Plainly, this was a limitation as to a certain class, of the right to recover damages for death (as to the question with respect to personal injuries we have nothing to do here) as against another class, in particular cases. The Legislature's right to make the limitation will not be questioned. It excluded from the limitation, in express terms, a certain class of persons, viz., passengers. It might have included them had it seen fit; it might have said there shall be no recovery for death from negligence in any case, but the law shall be the common-law rule.

Thus stood the law, as to the right to recover for death from negligence in Pennsylvania, when Alfred J. Price became a route agent on the Western Pennsylvania railroad; and thus it stood when he was killed.

It is admitted that he was then "lawfully engaged or employed * * * in and about a car" of the Pennsylvania Railroad Company, "of which company" he was "not an employee." It, therefore, seemed to follow, that any "right of action or recovery * * * against the company" in his case "was such only as would exist if" he had been "an employee."

But it was contended that Price was a "passenger" within

the meaning of the proviso of the act, and therefore that his widow could recover for his death.

This is the "question that was raised and presented to the highest court of the State for decision."

In what way was it a Federal question?

1. There was not drawn in question the validity of any treaty or statute of, or authority exercised under, the United States.

2. There was not drawn in question a statute of, or authority exercised under, a State, upon the ground of repugnance to the Constitution or a law or treaty of the United States.

3. It was not the case of a right claimed under the Constitution or a treaty or a law of, or by virtue of a commission held or authority exercised under, the United States.

There was nothing involved in the case but a question of the *construction* of a State statute, the validity of which was not assailed. No right gained under any Federal law entered into the case. *The right asserted was to recover damages for death caused by negligence; but this right came from the State statute, not from Federal.* The validity of neither State nor Federal law was in question.

The language of Grier, J., in Gill *vs.* Oliver's Executors, 11 Howard, 548, is peculiarly applicable, and may serve to conclude this discussion:

"It is a conclusive test of the question of jurisdiction of this court in the present case that if we assume jurisdiction, and proceed to consider the merits of the case, we find it to involve no question either of validity or construction of treaties or statutes of the United States."

JOHN DALZELL.